

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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JAMES C. MCCARTHY

v.

BOWE BELL + HOWELL CO.

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Civil No. JFM-04-1799

MEMORANDUM

Plaintiff instituted this action against Bowe Bell + Howell Company in the District Court of Maryland for Kent County. He alleged that defendant had committed a breach of contract by terminating medical benefits to his wife and himself. The complaint contained two counts, one seeking injunctive relief, the other monetary damages. The contract upon which plaintiff's claims are based is a settlement agreement the parties entered into in 1989 when defendant terminated plaintiff's employment.

Defendant removed the action to this court, contending that plaintiff's claims are preempted by ERISA. Simultaneously, defendant moved to dismiss the action. Plaintiff, in turn, has filed a motion to remand. For the reasons that follow, both motions will be denied.

I.

Plaintiff alleges (and defendant does not deny) that in 1989 plaintiff was employed with defendant as an employment manager. As a result of a restructuring of the company, defendant sought to eliminate plaintiff's position. Plaintiff at the time was the oldest and most senior employee in his department. When advised of the elimination of his position and the termination of his employment, plaintiff asserted numerous claims (including one for age discrimination) against defendant.

In an effort to resolve their dispute, plaintiff and defendant entered into settlement

negotiations. These negotiations resulted in an agreement dated September 8, 1989. The agreement provided, inter alia, as follows:

Upon your retirement from Bell & Howell Phillipsburg Company you will be entitled to medical, surgical, hospitalization and prescription drug benefits for you and your spouse. Dental benefits will continue for yourself until age 65. Upon attainment of age 65, you and your spouse will be provided with 65 Special coverage. Your prescription drug coverage for you and your spouse will continue for life.

\* \* \* \* \*

Since this separation agreement includes commitments by the Company in excess of standard policy in some areas, by your signature below you agree that it is in lieu of and in full satisfaction of the benefits which would otherwise be applicable, and you agree to release Bell & Howell and its officers and employees from any and all claims, liabilities and expenses (including attorney's fees) relating to your employment or termination, except as set forth in this letter.

Up until the end of 2003, defendant fulfilled its obligation to provide medical benefits to plaintiff and his wife through a Blue Cross Health Insurance Plan maintained by defendant for salaried employees. Effective January 2004, defendant amended the Plan with respect to retirees at the Allentown facility (where defendant had been employed) by, among other things, terminating coverage for all retirees at age 65.

Defendant has filed a declaratory judgment action against members of the retiree class in the Northern District of Illinois seeking judicial imprimatur for its decision to terminate their benefits. Plaintiff is over 65, and defendant contends he is a member of the class in that action. Defendant also contends that the Illinois action should be afforded priority over this one because it was earlier filed. *See Ulmet v. United States*, 888 F.2d 1028, 1031 (4<sup>th</sup> Cir. 1989).

## II.

Plaintiff's claims are, as contended by defendant, preempted by ERISA because the

settlement agreement upon which the claims are based relates to the provision of medical benefits. *See Biggers v. Wittek Indus., Inc.*, 4 F.3d 291, 296-98 (4<sup>th</sup> Cir. 1993). However, that does not mean plaintiff's claims are the same as the claims of the retirees whose rights to receive continued benefits are being litigated in the Illinois declaratory judgment action. Plaintiff's claims arise from a unique and individualized contract he entered into with defendant himself in settlement of the claims he was asserting when his employment was terminated fifteen years ago. In that contract defendant did not merely agree that plaintiff could participate in the Plan as any other salaried employee or retiree of defendant. Rather, defendant promised to provide plaintiff and his wife prescription drug coverage for life, and to provide them with "65 Special coverage" upon attainment of age 65. Defendant also acknowledged that the settlement agreement "includes commitments by the Company in excess of standard policy in some areas."

In effect, plaintiff has a "one man" ERISA plan. *Id.* at 298. Because his settlement agreement with defendant did not tie his right to receive benefits to the rights of comparably situated salaried employees and/or retirees of defendant, plaintiff is entitled to continued receipt of benefits even if defendant properly has terminated the rights of others to receive such benefits under the terms of the Plan.<sup>1</sup>

The cases relied upon by defendant are not to the contrary. In *Stiltner v. Beretta U.S.A. Corp.*, 74 F.3d 1473 (4<sup>th</sup> Cir. 1996), it was held that "no reasonable fact finder could find that the

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<sup>1</sup>The term "Special coverage" to which the settlement agreement entitles plaintiff and his spouse upon the attainment of age 65 is not defined in the agreement. It may well refer to terminology used in the Plan. That fact serves to reinforce the preemption of plaintiff's common law contract claims by ERISA. *See Biggers*, 4 F.3d at 297. However, because the settlement agreement does not say that plaintiff is entitled to Special coverage at the age of 65 "like other employees of defendant who have attained age 65," it does not condition plaintiff's right to Special coverage upon the rights of others to receive Special coverage.

parties intended [Stiltner's offer letter] to impose upon Beretta an obligation to pay Stiltner long-term disability benefits above and beyond those provided by the terms of the Disability Plan." *Id.* at 1479. Here, the express terms of the settlement agreement recognize that plaintiff is being afforded rights "in excess of standard policy in some areas." In *Kirkland v. SSL Americas, Inc.*, 263 F. Supp. 2d 1326, 1346-48 (M.D. Ala. 2003), the court found that the contract upon which plaintiff's claim for severance pay was based necessarily implicated the terms and procedures of defendant's company-wide ERISA plan. In contrast, in the present case defendant's obligation to maintain medical coverage for plaintiff and his spouse is clearly set forth within the four corners of the settlement agreement.

*Nester v. Allegiance Healthcare Corp.*, 162 F. Supp. 2d 901, 902 (S.D. Ohio 2001), involved a claim that plaintiffs had been promised "transition benefits" to terminate their employment with Baxter International, Inc. and join a company that had been spun off by Baxter. The court found that even if such a commitment had been made, the new company was free under ERISA to modify or terminate any of the promised transition payments. *Id.* at 908. Here, the clear and plain language of the contract between plaintiff and defendant, entered into to resolve a pre-existing dispute between them, expressly conferred upon plaintiff the rights he is now seeking to enforce without providing any escape clause for defendant to modify or terminate them.

Finally, in *Denniston v. Taylor*, No. 98-CV-3579, 2004 U.S. Dist. LEXIS 1512, \*17 (S.D.N.Y. Feb. 6, 2004), while the court found that a breach of contract claim asserted by plaintiff failed on the merits, it recognized that "[a]t least to the extent of his damages claims that are not dependent on plan formulae for measurement," plaintiff's claim was not preempted.

Here, although under *Biggers* I must find that plaintiff's claims are preempted, the individualized nature of the claims is underscored by the fact that the standard for measuring his monetary damages is not "Plan formulae" but rather the cost of obtaining insurance coverage on his own to substitute for the coverage to which he was entitled under the settlement agreement.

In sum, I find that plaintiff's claims are preempted by ERISA. However, I find that plaintiff's rights, stemming from the settlement agreement, are individualized and do not coincide with the rights of the retirees who are the members of the retiree class in the Illinois litigation. Therefore, plaintiff's motion to remand will be denied but defendant's motion to dismiss will likewise be denied. The action will proceed in this court with plaintiff's claims being recast as an ERISA claim. A separate order to that effect is being entered herewith.

Date: September 7, 2004

/s/  
J. Frederick Motz  
United States District Judge

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ORDER

For the reasons stated in the accompanying memoranda, it is, this 7th day of September  
2004

ORDERED

1. Plaintiff's motion to remand is denied;
2. Defendant's motion to dismiss is denied; and
3. Plaintiff's breach of contract claims are recast as a claim under ERISA.

/s/

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J. Frederick Motz  
United States District Judge